Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

To: The Commission

REPLY COMMENTS OF ARCH WIRELESS, INC.

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I. INTRODUCTION AND SUMMARY

Arch Wireless, Inc. ("Arch"), a national provider of paging and messaging services, hereby submits reply comments in response to the *Triennial Review NPRM* in the above-captioned proceeding.[1] In its initial comments in this proceeding, Arch supported the efforts of the Federal Communications Commission's ("FCC" or "Commission") to "consider the circumstances under which incumbent local exchange carriers (LECs) must make part of their networks available to requesting carriers on an unbundled basis."[2] The Commission recognized that Congress adopted section 251 of the 1996 Act in order "to permit *requesting carriers* to

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[1] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 22781 (Dec. 20, 2001) ("*Triennial Review NPRM*").

[2] *Triennial Review NPRM,* 16 FCC Rcd. at 22783; Arch Comments at 1, 4.

compete."[3] Accordingly, Arch and others proposed that the Commission's unbundling rules should require incumbent local exchange carriers ("ILECs") to provide unbundled network elements ("UNEs") to all requesting carriers, including paging carriers.[4]

On May 24, 2002, the United States Court of Appeals, District Court of Columbia Circuit, in *United States Telecom Association v. Federal Communications Commission* ("USTA *v. FCC*")[5] remanded the FCC's decisions in the *UNE Remand Order*[6] and the *Line Sharing Order.*[7] Of particular importance to the instant *Triennial Review NPRM* was the D.C. Circuit's decision to remand to the Commission for reconsideration the "impair" analysis, used to determine what network elements requesting carriers are entitled to demand on an unbundled basis from the ILECs.[8]

Arch's initial Comments explained that paging carriers are "requesting carriers," that Arch is "impaired" without access to UNEs, and that Arch is currently required to purchase the dedicated transport UNE at the ILECs' high tariffed rates.[9] Numerous other commentors

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3 *Triennial Review NPRM,* 16 FCC Rcd. at 22783 (*emphasis added*).

4 Arch Comments at 1-2; *see also* AT&T Wireless Comments at 6, 8; Dobson Comments at 4-5; Nextel Comments at 2, 4, 8; Voicestream Comments at 6.

5 *United States Telecom Association v. Federal Communications Commission,* 290 F.3d 415 (D.C. Cir. May 24, 2002).

6 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd. 3696 (1999) *("UNE Remand Order"*).

7 *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd. 20912 (1999) ("*Line Sharing Order*").

8 *USTA v. FCC,* 290 F.3d at 417.

9 Arch Comments at 3.

supported Arch's positions, arguing that the Commission should require ILECs to provide UNEs, including dedicated transport, to all requesting CMRS carriers.[10] Further, Arch and other commentors argued that the paging terminal in the paging carrier's network and the base station in a CMRS carrier's network qualify as a "switch" such that transmission between the LEC end office and the paging terminal or base station qualify as dedicated transport.[11] The D.C. Circuit's decision in *USTA v. FCC* does not affect these arguments, and Arch reaffirms (but does not reiterate) them here. Instead, Arch focuses in these reply comments on the issues raised by *USTA v. FCC*.

The record in the *Triennial Review NPRM* proceeding, as well as lessons learned by the Commission since the release of the *UNE Remand Order*, show a strong record of support for the Commission's previous finding that UNEs should be unbundled on a nationwide basis. Indeed, the D.C. Circuit's decision, which calls this conclusion into question, appears inconsistent with the pronouncement of the Supreme Court in *Verizon Communications Inc. v. Federal Communications Commission* ("*Verizon v. FCC"*).[12] In that case, the Supreme Court held that it is not for the courts to determine whether the FCC picks the "best way" to shape ILEC unbundling requirements, but rather to decide "whether the Commission made choices reasonably within the pale of statutory possibility."[13]

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[10] AT&T Wireless Comments at 10-11, 21-22; Dobson Comments at 3, 8-9; VoiceStream Comments at 2, 7, 15-16; Nextel Comments at 2, 4, 8.

[11] Arch Comments at 11-14; Nextel Comments at 2-8; Progress Telecom Comments at 3; Voicestream Comments at 9.

[12] *Verizon Communications Inc. v. Federal Communications Commission*, 122 S. Ct. 1646 (2002).

[13] *Verizon v. FCC*, 122 S. Ct. at 1687.

In any event, should the Commission determine that the D.C. Circuit's decision in *USTA v. FCC* requires a geographic and/or service-specific unbundling requirement, the language of the decision makes clear that potential problems with nationwide unbundling rules identified by the D.C. Circuit with regard to CLEC services do not pertain to the operations of paging and CMRS carriers. Indeed, the Circuit Court decision focuses exclusively on competitive local exchange carriers ("CLECs") that provide service in urban areas, without any obligation to serve rural areas, as creating concerns that a nationwide unbundling analysis is unworkable. Dedicated transport links for paging and CMRS carriers, however, should continue to be unbundled on a nationwide basis due to these carriers' unique, ubiquitous network structures.

If, however, the Commission decides to apply a geographic unbundling rule to UNEs for all carriers, such a determination should be made in a manner that does not itself impair competitors. In support of this conclusion, Arch proposes that any geographic areas adopted by the Commission reflect existing UNE cost zones. By using UNE cost zones, the Commission can at least minimize the burden on and protect the rights of impaired carriers, such as Arch, to purchase UNEs in order to provide service to all portions of the country.

Finally, the Commission should use the *Triennial Review NPRM* proceeding as an opportunity to clarify its previous determinations regarding the rights of interconnecting carriers to interconnect with the incumbent's network at any technically feasible point. The Commission should affirm that incumbents are obligated to provide interconnecting facilities to interconnecting carriers at TELRIC rates, not at the incumbent's higher access tariff rates, and should conclusively determine that the incumbents must deliver their traffic to the interconnecting carrier at the point of interconnection designated by the interconnecting carrier.

II. THE COMMISSION'S UNBUNDLING RULES MUST ENSURE THAT REQUESTING CMRS CARRIERS ARE NOT IMPAIRED WITHOUT ACCESS TO DEDICATED TRANSPORT

A. The D.C. Circuit's Decision Does Not Preclude a National Unbundling Rule

In considering its unbundling rules in the context of this proceeding and in response to the D.C. Circuit's ruling, the Commission should bear in mind that the D.C. Circuit's decision did not require a geographic unbundling analysis. Rather, it simply found that the analysis in the *UNE Remand Order* was insufficient to justify national unbundling rules. The court was particularly troubled by what it viewed as insufficient explanation of why ILECs must offer unbundled network elements in areas where ILECs are required, by state rate averaging rules, to price service to end users at above-cost rates, even though ILECs must offer below-cost service to end users in other areas while CLECs face no such requirement.[14] The court found that the Commission's analysis of five factors rooted in the goals of the statute did not overcome this infirmity.[15] The Commission's conclusions, however, are sound.

As a general matter, a reasoned explanation exists for requiring national UNE unbundling despite the existence of state rate averaging for ILECs. First, the danger the court seems to perceive – that national unbundling rules will give CLECs an unfair advantage through the right to purchase UNEs nationwide – is unlikely to materialize. As the Supreme Court recognized in *Verizon v. FCC,* there are other inefficiencies built into the FCC's local competition rules that

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[14] *USTA v. FCC,* 290 F.3d at 422.

[15] *USTA v. FCC,* 290 F.3d at 423.

create incentives for CLECs to construct their own facilities rather than purchasing UNEs from the ILECs.[16]

In addition, the Commission was justified in considering the five factors, in addition to impairment, in determining that it should adopt a national list of UNEs. The court did not state that consideration of the factors was inappropriate, so long as the Commission considered impairment as the "touchstone" of the unbundling analysis.[17] The court found fault with the depth of the *UNE Remand Order's* consideration of some of the factors, but the fact remains that the factors initially applied by the Commission, as buttressed by the record developed in the aftermath of *USTA v. FCC* strongly support national UNE rules.

In particular, the need for certainty in the marketplace and administrative practicality cannot be underestimated. The court was dismissive of these two factors because the Commission adopted geographically specific unbundling rules for circuit switching, while rejecting such an approach for the other elements.[18] The important point, which was implicitly recognized in the *UNE Remand Order,* is that a disaggregated unbundling analysis would significantly hinder requesting carriers' access to UNEs and harm competition, and therefore should be pursued only when absolutely required by the statute's impairment criterion.

Regarding circuit switching, the Commission carved out a finite and limited exception to its national unbundling policy based upon clear evidence in the record of the *UNE Remand Order* proceeding that requesting carriers had deployed much greater numbers of switches in

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[16] *Verizon v. FCC*, 122 S. Ct. at 1670.

[17] *USTA v. FCC*, 290 F.3d at 425.

[18] *USTA v. FCC*, 290 F.3d at 423.

areas of high customer density.[19] The Commission concluded that it was reasonable to restrict some ILEC unbundling requirements for local circuit switches that serve four or more lines in the top 50 MSAs, "because nearly all of the top 50 MSAs contain a significant number of competitive switches,"[20] but only when enhanced extended link ("EELs") are offered as well.

The Commission's rationale for adopting geographically specific unbundling rules for circuit switching does not undermine the Commission's basic position that geographic unbundling should be avoided generally because it harms administrative practicability and marketplace certainty. In reality, carriers such as Arch must purchase interoffice transmission facilities to interconnect their own and the ILECs' facilities on a state-by-state basis. It is unreasonably burdensome for carriers with widespread, urban, suburban and rural operations to research, consider, and contract with a patchwork of alternative providers.[21]

The court also was critical of the Commission's analysis regarding the benefits of national rules for promoting facilities-based competition, investment and innovation.[22] This criticism however, cannot be squared with the Supreme Court's decision of only a few days earlier.[23] In *Verizon v. FCC*, the Supreme Court upheld the FCC's determination that its unbundling approach is reasonably calculated to spur competition and investment.[24] In fact, the Supreme Court stated that "actual investment in competing facilities since the effective date of

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19 *UNE Remand Order*, 15 FCC Rcd. at 3826.

20 *Id.*

21 *Verizon v. FCC*, 122 S. Ct. at 1662.

22 *USTA v. FCC*, 290 F.3d at 424.

23 *Verizon v. FCC,* 122 S. Ct. at 1646.

24 *Verizon v. FCC*, 122 S. Ct. at 1652.

the Act simply belies the no-stimulation argument's conclusion."[25] The Supreme Court upheld the reasonableness of the Commission's decision by questioning: "Is it better to risk keeping more potential entrants out, or to induce them to compete in less capital-intensive facilities with lessened incentives to build their own bottleneck facilities? It was not obviously unreasonable for the FCC to prefer the latter."[26]

Supported by the Supreme Court and the record in this proceeding, the Commission's conclusion that unbundling encourages facilities-based competition is reasonable. CompTel properly argued in its comments that the 1996 Act does not authorize the Commission to discriminate against UNE-based entry in favor of facilities-based entry.[27] Allegiance also added that unbundling "will promote facilities-based competition because, as the Commission held in the *UNE Remand Order*, the availability of UNEs where non-ILEC alternatives are insufficient allows competitive carriers to build the scale and scope economies needed to invest in their own facilities."[28]

Finally, the court in *USTA v. FCC* found lacking the *UNE Remand Order's* analysis of why national rules reduce regulation. However, deeper examination demonstrates the importance of this criterion. In the *UNE Remand Order*, the Commission originally provided a brief explanation for why a national unbundling rule would reduce regulation.[29] The Commission concluded that "reduced regulation will occur as we remove elements from the list

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[25] *Verizon v. FCC*, 122 S. Ct. at 1669.

[26] *Verizon v. FCC,* 122 S. Ct. at 1672.

[27] CompTel Comments at 7.

[28] Allegiance Comments at 2; *see also* ALTS Comments at 11, 18.

as requesting carriers are no longer impaired without access to those elements."[30] The D.C. Circuit complained that the Commission "does not elaborate on this counterintuitive proposition."[31] While the Circuit Court "cannot see how imposition and then retraction of a national mandate is more deregulatory, overall, than imposition and retraction of a partial one," it does not seem to consider whether a "partial mandate" in this case would require individual patchwork determinations to both be imposed and retracted.[32]

If the Commission would have to consider each element in each geographic sphere, greater regulation would result. A regulator would have to apply the "necessary" and "impair" test to each element in each geographic area, resulting in both a laborious regulatory process and a complex set of rules. Further, this same analysis might have to be duplicated for each category of service provider, while reconsidering the geographic area analysis, because, as noted below, the geographic area used for CLECs to order UNEs may not work for CMRS carriers ordering UNEs. If, for example, the Commission started with the current eight UNEs, applied to approximately four services (local, interexchange, CMRS, and data) in three or so geographic areas, the result would be a complex matrix of rules.

Accordingly, the Commission should not take the D.C. Circuit's criticisms of its process as necessarily requiring the abolition of its national unbundling rules. Rather, the Commission should use this proceeding as an opportunity to build a record of support for its sound conclusion that a national unbundling rule appropriately and reasonably addresses the impairment faced by

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[29] *UNE Remand Order,* 15 FCC Rcd. at 3762.

[30] *UNE Remand Order,* 15 FCC Rcd. at 3762.

[31] *USTA v. FCC*, 290 F.3d at 423.

requesting carriers nationwide. To conclude otherwise would lead the Commission and carriers down a long road of uncertainty and confusion regarding the state of ILEC unbundling requirements.

B. Unbundling on a Geographic Basis is Not Warranted for Paging Carriers

To the extent that the D.C. Circuit finds fault with the Commission's analysis adopting national unbundling rules, the court's criticism cannot be deemed to apply to national rules applicable to paging and other CMRS carriers that provide service over large areas, including urban, suburban, and rural markets. If the Commission concludes that a more granular unbundling analysis is needed for access to UNEs by carriers with limited footprints, such as CLECs, a national unbundling rule should nonetheless be retained for dedicated transport for paging and other CMRS carriers[33] that provide service across wide areas of differing densities.

USTA v. FCC cites statistics suggesting that CLECs have targeted their entry in dense urban areas where ILECs are required by state rate averaging rules to overcharge their customers; notes that CLEC entry in rural areas where ILEC rates are kept below cost would be "wholly artificial"; and concludes that the Commission has never explained why this outcome "makes sense."[34] Whether or not it makes sense to have national unbundling rules in the CLEC context, however, it clearly makes sense for paging carriers and other CMRS providers. These carriers provide a service that depends on the ILECs' ubiquitous transport network but they

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[32] *USTA v. FCC*, 290 F.3d at 423-424.

[33] Commercial Mobile Radio Services (CMRS) include paging, cellular, and PCS service, as well as most other commercially available mobile messaging and voice services. *See* 47 C.F.R. Part 20.

[34] *USTA v. FCC*, 290 F.3d at 422.

cannot, by the nature of the service they provide, target their entry to urban customers. Paging and other CMRS carriers are licensed to provide service over large areas, such as Major Economic Areas ("MEAs"), Major Trading Areas ("MTAs") or Basic Trading Areas ("BTAs"), that encompass a number of counties and include suburban and rural, as well as urban, areas. Some paging and other CMRS licensees hold nationwide spectrum licenses. Others hold regional or site-by-site licenses that provide for regional or nationwide coverage. Arch, for example, operates four nationwide 900 MHz paging networks. Paging and CMRS carriers are subject to build-out requirements that obligate them to put in place facilities to serve the large areas over which they are licensed, including rural and suburban areas, as well as urban areas.[35] Also, customers of mobile service demand the ability to use their pagers or mobile phones wherever they may travel, to the extent practicable,[36] providing a strong market-based incentive for mobile carriers to offer ubiquitous service.

In order to provide coverage over wide geographic areas, paging and other CMRS carriers must purchase transmission links on a broad basis. As noted above, it is unreasonable to expect that paging carriers can effectively consider localized providers in particular geographic areas where alternatives may or may not be available. Indeed, even now, as Arch and similar carriers are forced to purchase transmission links out of ILECs' high-priced tariffs, the practical

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[35] The Commission's recently released annual report on CMRS competition notes that, although CMRS competition is less robust in rural areas, still, 97% of the total U.S. population live in counties where, for example, digital mobile telephone service is available, comprising 70% of the land area of the United States. *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services,* FCC 02-179, *Seventh Report* (rel. July 3, 2002) at 28.

[36] Arch, for example, has a number of corporate customers that depend upon the broad reach of Arch's networks to reach their employees throughout regions or the country.

tendency is to enter into statewide contracts with incumbents rather than a patchwork of individual contracts with other carriers in the rare instances where such exist.

For all these reasons, even if the Commission concludes that a more granular unbundling analysis is needed for some carriers, the Commission should recognize that paging and other CMRS carriers serve geographically diverse areas, purchase transmission links on a broad geographic basis, and are impaired without access to dedicated transport at UNE rates. Accordingly, such carriers should have access to interoffice transmission links based on national unbundling rules. The D.C. Circuit's analysis, to the extent it questions national unbundling, does so for reasons that have no bearing on the market in which CMRS carriers purchase ILEC transmission facilities, and thus is inapposite.

C. Any Unbundling Analysis Should Be Applied in a Manner that Least Harms Paging Carriers

Of foremost importance to the Commission in the *Triennial Review NPRM* proceeding is that the "regulatory framework remains current and faithful to the pro-competitive, market-opening provisions of the 1996 Act."[37] If, despite all the reasons to the contrary, the Commission decides to apply a geographic unbundling analysis to paging and other CMRS carriers' access to ILEC interoffice transmission facilities, it is imperative that such an analysis be applied in a manner that least harms these carriers' interests. The Commission should balance any perceived need for a granular unbundling analysis, in light of the court's ruling, with the burdens of "applying a separate unbundling analysis to every service or every geographic area

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[37] *Triennial Review NPRM*, 16 FCC Rcd. at 22782.

[which] will create unreasonable burdens on the Commission and competitors, and could harm the advance of technology."[38]

Thus, if the Commission chooses to apply geographic unbundling, Arch proposes that the Commission use previously determined UNE cost zones as the geographic area in which impairment will be analyzed. Under the Commission's rules, state commissions must create at least three defined geographical areas (UNE cost zones) within the state to reflect geographic cost differences for UNEs.[39] Using input from the states, the Commission could apply its unbundling analysis for each of the three or more zones on a nationwide basis, while properly reflecting urban, rural and residential areas. Such an analysis would, to some extent, minimize the burden of geographic unbundling, address the D.C. Circuit's CLEC "cherry-picking" concerns, while protecting those carriers that serve predominately rural areas.

In the absence of national unbundling rules, using the UNE cost zone approach would be the best means for determining whether carriers are impaired without access to a particular UNE. While remaining concerned about the harmful affects of a geographic unbundling approach to the state of competition, Arch understands the Commission's desire to balance the interests of all affected carriers. This task is, however, particularly difficult when trying to find a method of unbundling that is not unduly complicated for both the Commission and carriers. Although the Commission's UNE cost zones have no bearing on how paging and other CMRS carriers are licensed or provide service, Arch would accede to the use of UNE zones as an accommodation, and it appears that, aside from a national unbundling policy, this is the most workable solution for the Commission and all carriers at this time. Accordingly, if the Commission decides that it

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[38] Arch Comments at 6-7.

must undertake a geographic unbundling analysis, it should use UNE cost zones for all UNEs and all services, in order to create a reasonable regulatory framework that addresses the needs of all service providers.

III. THE COMMISSION SHOULD REQUIRE ILECS TO COMPLY WITH EXISTING COMMISSION INTERCONNECTION REQUIREMENTS

In the context of its Triennial Review of its unbundling rules, the Commission should take the opportunity to reaffirm certain of its existing interconnection rules that are presently threatened with erosion. From the outset, the Commission has made clear that facilities provided by ILECs to link their switches with equivalent facilities on CMRS networks should be priced in the same way as unbundled elements, *i.e.* at TELRIC rates rather than at the subsidy-laden rates stated for dedicated facilities in access tariffs.[40] Section 251(c) also states that carriers may choose to interconnect at any technically feasible point. The ILEC has the burden of showing the infeasibility of the point designated by its competitor.[41] Finally, the Commission's regulations require *originating* carriers to absorb the costs of transporting calls to the *terminating* carrier's switch or equivalent facility.

Notwithstanding these clear rules, most ILECs to this day do not provide interconnect facilities at UNE (*i.e.* TELRIC) rates but rather at much higher access tariff rates.[42] Moreover,

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[39] 47 C.F.R. § 51.507(f).

[40] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499, 15844 ¶ 672 (1996) ("*First Report and Order*").

[41] *See First Report and Order*, 11 FCC Rcd. at 15602-15603.

[42] Qwest is the only ILEC with which Arch interconnects that charges TELRIC (rather than access) rates for at least some of the inter-switch links needed to terminate Qwest's own calls on the Arch network. All other ILECs bill at access tariff rates for dedicated transport. The

most if not all ILECs require that connections be established with every ILEC tandem in the relevant LATA. [43]

Finally (and most disturbing of all) is the insistence of large and small ILECs alike that direct physical connections be established – at the sole expense of the CMRS provider and irrespective of which carrier has originated the traffic being delivered – to every location on the ILEC network to which the CMRS carrier has rated its numbers.[44] This latest attempt by the ILECs to dismantle existing interconnect rules is the subject of the Commission's ongoing interconnect NPRM.[45] Unfortunately, however, the Enforcement Bureau may have prejudged

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difference between access and TELRIC rates is significant, as illustrated by the Qwest rates for DS-1 transport in the state of Washington:

One DS-1 ("T-Span") (25 miles) (Monthly Rates)

TELRIC (UNE) RATES:	Channel Facility	$ 99.78
	Fixed Mileage	41.73
	Variable Mileage	2.97/mile
ACCESS TARIFF RATES:	Channel Facility	$108.00
	Fixed Mileage	120.00
	Variable Mileage	14.60/mile

[43] The typical post-1996 Type 2 interconnection arrangement between Arch and a major ILEC requires Arch to establish DS-1 facilities with each ILEC tandem in the relevant MTA. To the extent these facilities are used to carry ILEC-originated calls, they are paid for by the ILEC pursuant to the requirements of 47 C.F.R. Sections 51.703(b) and 51.709(b).

[44] *See, e.g.,* Comments of Arch; Comments of Verizon; Comments of Allied PCIA of California (CC Docket No. 01-92, filed August 21, 2001). Arch is currently negotiating interconnection arrangements with SBC on the basis of a "master agreement" posted for many months on the SBC website. Citing a recent decision by the Enforcement Bureau (see note 7 below), SBC withdrew its "master agreement" from discussions and substituted a document that would (a) require Arch to pay access rates for all interconnect facilities, (b) would deny Arch termination compensation for any call delivered to Arch at a point beyond the local SBC calling area where the call originates, and (c) would require Arch to pay the costs of transporting SBC originated local calls from the originating local calling area to the location (within the MTA) of the Arch terminal.

[45] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610 (rel. April 27, 2001).

the question in a little-publicized complaint case decided in February 2002 without any opportunity for public comment, and without any opportunity for other parties to challenge the result, despite its inconsistency with the Commission's rules and policies.[46]

The Commission must consider the collective impact of all these developments. The ILECs have imposed access-based rates for dedicated transport, even while requiring interconnecting carriers to purchase a greater (and inefficient) number of intercarrier links. In addition, they now refuse to pay their own share of these inflated costs where the subject facilities are used to carry local ILEC traffic. The net result threatens profound prejudice to the CMRS industry. Thus, the Commission should clarify interconnecting carriers' right to interconnect at any feasible point, and the ILECs' obligation to deliver their customers' traffic to interconnecting carriers at the point of interconnection designated by the interconnector. In any event, interconnection facilities should be provided at UNE, rather than tariffed, rates.

CONCLUSION

Arch maintains the positions it took in its initial comments in this proceeding that all requesting carriers, including paging and CMRS carriers, are impaired without access to UNEs and therefore are entitled to order them from the ILECs. In particular, the Commission should recognize that the definition of the dedicated transport UNE includes transmission links used in

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[46] In *Mountain Communications v. Qwest Communications International*, File No. EB-00-MD-017, *Memorandum Opinion & Order*, 17 FCC Rcd. 2091 (rel. February 4, 2002), the Enforcement Bureau seems to have endorsed the proposition that notwithstanding the clear language of Sections 51.703(b) and 51.709(b) of the FCC's rules, *the ILEC has no obligation to transport its own intra-MTA calls beyond the local calling area where they originate*. Effectively, the order, if applied generally, would require CMRS providers to establish points of interconnection in each ILEC local calling area served by them and, moreover, to pay for the linking facilities themselves, even where the facilities are used to transport ILEC originated calls that are "local" as defined by 47 C.F.R. § 51.701 (b).

wireless networks, such that paging carriers can order dedicated transport from the ILEC wire center to both paging terminal and paging base stations or transmitters.[47]

The D.C. Circuit's decision in *USTA v. FCC* does not require the Commission to adopt a geographic unbundling requirement. Rather, the Commission should use the *Triennial Review NPRM* proceeding to bolster its conclusion that a nationwide unbundling rule is necessary.

Should the Commission conclude that a geographic-specific unbundling requirement is necessary, however, such a rule must be established with an eye toward protecting carriers that serve rural and underserved areas. The Circuit Court's decision focused on CLECs that order unbundled elements in urban areas, without having any obligations to provide service in rural areas, not paging and CMRS carriers. If the Commission nevertheless decides that it must use a geographic unbundling analysis, it should use UNE cost zones as reasonable geographic areas in which rural, urban and residential services areas are properly reflected.

Finally, the Commission should use this proceeding as an opportunity to solidify the rights of interconnecting carriers to interconnect at any technically feasible point with the

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[47] Arch Comments at 14.

incumbents' network, to obtain interconnecting facilities at TELRIC rates, and to determine the point of interconnection for the delivery of the incumbents' traffic.

Respectfully submitted,

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